

INDONESIA – AUTOS¹

(DS54, 55, 59, 64)

PARTIES		AGREEMENTS	TIMELINE OF THE DISPUTE	
Complainants	<i>European Communities, Japan, United States</i>	<i>TRIMs Art. 2.1</i>	Establishment of Panel	<i>12 June 1997</i>
		<i>GATT Arts. I:1 and III:2</i>	Circulation of Panel Report	<i>2 July 1998</i>
Respondent	<i>Indonesia</i>	<i>ASCM Arts. 5(c), 6, 27.9 and 28</i>	Circulation of AB Report	<i>NA</i>
			Adoption	<i>23 July 1998</i>

1. MEASURES AND PRODUCTS AT ISSUE

- Measures at issue: (i) "The 1993 Programme" that provided import duty reductions or exemptions on imports of automotive parts based on the local content percent; and (ii) "The 1996 National Car Programme" that provided various benefits such as luxury tax exemption or import duty exemption to qualifying (local content and etc.) cars or Indonesian car companies.
- Products at issue: Imported motor vehicles and parts and components thereof.

2. SUMMARY OF KEY PANEL FINDINGS

- TRIMs Agreement Art. 2.1 (local content requirement):² The Panel found the 1993 Programme to be in violation of Art. 2.1 because (i) the measure was a "trade-related investment"³ measure; and (ii) the measure, as a local content requirement, fell within paragraph 1 of the Illustrative List of TRIMs in the Annex to the TRIMs Agreement, which sets out trade-related investment measures that are inconsistent with national treatment obligation under GATT Art. III:4.
- GATT Art. III:2 (national treatment): The Panel found that the sales tax benefits under the measures violated both Art. III:2, first and second sentences. The Panel noted that under the Indonesian car programmes, an imported motor vehicle would be taxed at a higher rate than a like domestic vehicle in violation of Art. III:2, first sentence, and also, any imported vehicle would not be taxed similarly to a directly competitive or substitutable domestic car due to these Indonesian car programmes whose purpose was to promote a national industry.
- GATT Art. I:1 (MFN treatment): The Panel found the measures to be in violation of Art. I:1 because the "advantages" (duty and sales tax exemptions) accorded to Korean imports were not accorded "unconditionally" to "like" products from other Members.
- ASCM Art. 5(c) (serious prejudice): The Panel found that the duty and sales tax exemptions under the 1996 National Car Programme were "specific subsidies" which had caused "serious prejudice" (through significant price undercutting under Art. 6.3(c)) to like imports of EC (but not US) imports under Art. 5(c).

3. OTHER ISSUES⁴

- Private counsel: Following the Appellate Body's ruling in *EC – Bananas*, the Panel, for the first time at this stage, allowed private counsels to be present in panel hearings as part of a party's delegation.

¹ *Indonesia – Certain Measures Affecting the Automotive Industry*

² Regarding the relationship between the TRIMs Agreement and GATT Art. III, the Panel noted that the TRIMs Agreement applies independently of Art. III and has autonomous legal existence. It then examined the claims on the TRIMs Agreement first since it is more specific than Art. III:4. The Panel eventually exercised judicial economy on the Art. III claim.

³ In respect of "investment" measures, the Panel noted that "domestic investment", in addition to "foreign investment", is also subject to the TRIMs Agreement.

⁴ Other issues addressed: Annex V (ASCM); terms of reference (DSU Art. 6.2, expired measure); protection of business confidential information; applicability (relationship) of multiple agreements (GATT Art. III, TRIMs Agreement and ASCM).